

Internal Revenue Service

Number: **201349003**

Release Date: 12/6/2013

Index Number: 9100.22-00, 992.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:BR6

PLR-111640-13

Date:

September 06, 2013

In Re:

LEGEND

Taxpayer	=
Individual	=
Corporation	=
Accounting Firm	=
Attorney	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=

Dear :

This responds to a letter dated March 7, 2013, submitted on behalf of Taxpayer, requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A ("Election To Be Treated as an Interest Charge DISC") for Taxpayer's first taxable year.

The rulings given in this letter are based on facts and representations submitted by Taxpayer, Accounting Firm, and Attorney, and accompanied by penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

FACTS

Taxpayer is a domestic corporation wholly owned by Individual that acts as a commission agent with respect to Corporation's sales of export property. Individual is President and Treasurer of Taxpayer, as well as, CEO of Corporation. Corporation is owned by six individuals, including Individual, and a trust. Individual and his wife, together, own more than half of the voting shares of Corporation. Accounting Firm is an accounting, auditing, and business consulting firm. In Date 1, Accounting Firm advised Corporation and Individual of the benefits associated with interest charge domestic international sales corporations ("IC-DISCs"). Subsequent to these discussions, Corporation contacted Attorney to request preparation of the necessary documents to form the entity that was intended to be treated as an IC-DISC.

Taxpayer was incorporated on Date 2 and was intended to be treated as an IC-DISC as of Date 3, the first day of Taxpayer's first taxable year.¹ Due to a misunderstanding between Accounting Firm and Attorney, Accounting Firm believed Attorney had had filed Form 4876-A on behalf of Taxpayer, and Attorney believed that Accounting Firm had filed the form. Believing all the requirements to conduct business and to be treated as an IC-DISC were satisfied, Taxpayer began operating as an IC-DISC as of Date 3.

Even though Taxpayer had assumed that all the necessary requirements to conduct business as an IC-DISC were satisfied, it did not qualify as an IC-DISC for federal income tax purposes because it did not timely file a Form 4876-A with the Service within 90 days of Date 3. Taxpayer represents that it did not realize this error until Date 4 when Accounting Firm discovered that Taxpayer's Form 4876-A had not been filed. Upon discovery that the form had not been filed, Taxpayer requested a ruling granting an extension of time to file Form 4876-A for its first taxable year.

LAW AND ANALYSIS

Section 992(b)(1)(A) of the Internal Revenue Code ("Code") provides that an election by a corporation to be treated as a DISC² shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) of the Code provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are

¹ Taxpayer obtained a letter from the Service stating that, based on a letter from Taxpayer dated February 22, 2013, the Service had updated its records to show that Taxpayer's business began operations on Date 3. Taxpayer asserts that, as a result, its first taxable year began on Date 3, not Date 2, which was two weeks earlier.

² As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. A corporation electing to be treated as an IC-DISC for its first taxable year must make the election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

The election described in the third sentence of Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). In addition, we express no opinion as to whether the payment of purchase prices or commissions (or portions thereof) to Taxpayer by Company may constitute taxable gifts. See, e.g., Rev. Rul. 81-54, 1981-1 C.B. 476. A copy of this letter ruling should be filed with the Form 4876-A.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Christopher J. Bello
Chief, Branch 6
Office of Associate Chief Counsel (International)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes